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Recordation of Transfers & Other Documents

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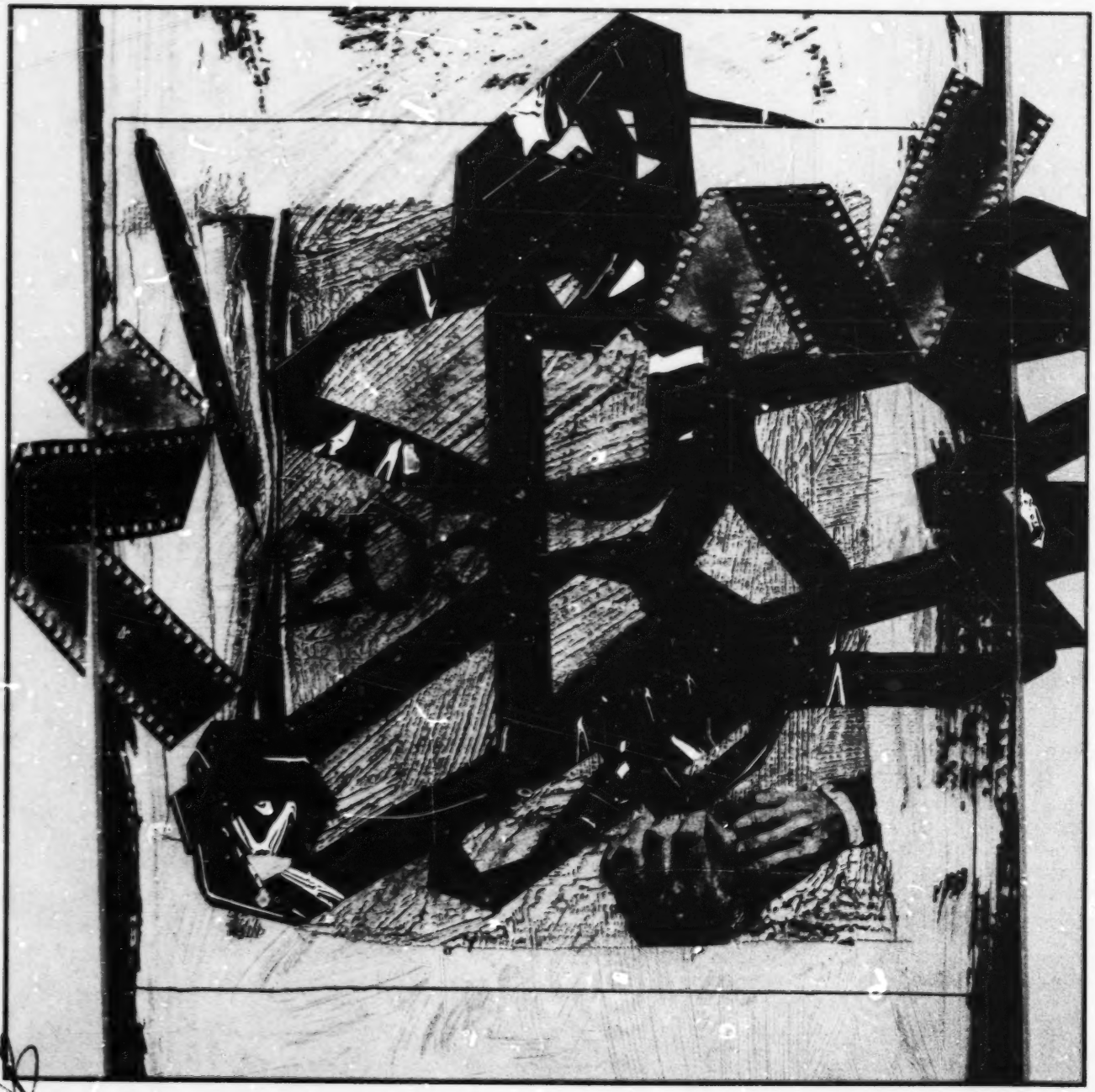

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Recordation of Transfers and Other Documents

IN GENERAL

What Copyright Is

Copyright is a form of protection provided by the laws of the United States to the authors of "original works of authorship" including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works.

Exclusive Rights

The initial owner of copyright generally has the exclusive right:

- To reproduce the work in copies or phonorecords;
- To prepare derivative works based upon the copyrighted work;
- To distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- In the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the work publicly;
- In the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture, or other audiovisual work, to display the copyrighted work publicly.

Owner of Copyright

Initially the author owns the copyright and only those deriving their rights through the author can rightfully assert ownership of copyright in the work. Copyright protection exists from the time the work is created and fixed in some tangible form. The copyright in the work immediately becomes the property of the author upon fixation. In the case of a work having more than one author, the authors are co-owners of the copyright, unless there is an agreement to the contrary. In the case of a work made for hire, the employer, not the employee, is presumed to be the author.

Divisibility of Copyright

Any or all of the exclusive rights of the copyright owner, or any subdivision of those rights, may be transferred. However, the transfer of exclusive rights is not valid unless the transfer is in **writing** and **signed** by the owner of the rights conveyed (or the owner's duly authorized agent). Transfer of a right on a nonexclusive basis does not require a written document, but a written document **is** required for all other transfers.

A copyright may also be conveyed by operation of law and may be bequeathed by will or pass at the death of the copyright owner as personal property by the applicable laws of intestate succession.

WHAT MAY BE RECORDED

A document which transfers copyright ownership or any other document pertaining to a copyright may be recorded in the Copyright Office, providing the requirements of the copyright statute (title 17 of the United States Code) are met. Examples of these documents and transfers and an explanation of the requirements for their recordation under section 205 of the Copyright Act are provided in this circular.

DEFINITIONS

Transfers

A "transfer of copyright ownership" is an assignment, mortgage, grant of an exclusive license, transfer by will or intestate succession, or any other change in the ownership of any or all of the exclusive rights in a copyright whether or not it is limited in time or place of effect, but not including a nonexclusive license. A transfer of exclusive rights, other than by operation of law, is not valid unless an instrument of conveyance (for example, contract, bond, deed), or a note or memorandum of the transfer, is in **writing** and **signed** by the owner of the rights conveyed or the owner's duly authorized agent. The Copyright Office does not *make*

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transfers of copyright ownership, but rather *records* a document of transfer after it has been executed by the parties. Special forms for documents and notarization are not essential to recordation, but the following information should be noted:

- *Forms*: The Copyright Office does not provide forms for the use of persons recording transfers or documents. Documents submitted for recordation should *not* be in the form of a letter to the Copyright Office because this Office cannot make transfers of copyright ownership, but rather it serves as an office of public record for transfers.
- *Notarization of Certificate of Acknowledgement*: It is not necessary for the validity of a transfer to have it notarized or otherwise accompanied by a certificate of acknowledgement. However, where the transfer is notarized or accompanied by a certificate of acknowledgement, it is prima facie evidence of the execution of the transfer if:

  1. In the case of a transfer executed in the United States, the certificate is issued by a person authorized to administer oaths within the United States; or

  2. In the case of a transfer executed in a foreign country, the certificate is issued by a diplomatic or consular officer of the United States, or by a person authorized to administer oaths whose authority is proved by the certificate of such a diplomatic or consular officer, or by a competent foreign authority pursuant to the provisions of the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents.

Documents Pertaining to a Copyright

A document is considered to "pertain to a copyright" if it has a direct or indirect relationship to the existence, scope, duration, or identification of a copyright or to the ownership, division, allocation, licensing, transfer, or exercise of rights under a copyright. That relationship may be past, present, future, or potential.

EXAMPLES:
Exclusive and nonexclusive licenses, contracts, mortgages, powers of attorney, certificates of change of corporate title, wills, and decrees of distribution.

The work to which the document pertains may be either published or unpublished and registration for the work need not have been made before recordation.

WHAT TO SUBMIT FOR RECORDATION

Any transfer of copyright ownership or other document pertaining to a copyright may be recorded in the Copyright Office if the document filed for recordation is accompanied by the appropriate fee and it meets the following requirements:

1. The document must bear the actual signature or signatures of the person or persons who executed it, or, if a photocopy of the original signed document is submitted, it must be accompanied by a sworn or official certification by one of the persons who executed the document or by his or her authorized agent that the reproduction is a true copy of the original signed document; and
2. The document must be complete by its own terms; that is, a document which contains a reference to any schedule, appendix, exhibit, addendum, or other material as being attached or made a part of it is recordable only if the attachment is submitted for recordation with the document; and
3. The document must be legible and capable of being reproduced on microfilm.

RECORDING FEE

Before the Copyright Office can record a document, it must receive the full recording fee prescribed in the law. The proper fee may be computed from the following schedule:

- The basic recording fee for a document consisting of six pages or less covering no more than one title is $10.
- An additional charge of 50 cents is made for each page over six.
- An additional charge of 50 cents is made for each title over one listed in the document, including former titles and alternate titles.

EXAMPLES:
A document consisting of two pages and containing two titles. Fee is $10.50.

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A document consisting of 10 pages and containing six titles. Fee is $14.50.

NOTE: The fee for each transfer is $10 regardless of how many transfers are on a single page.

ADVANTAGES OF RECORDATION

While the recordation of a transfer or document pertaining to a copyright is not mandatory, it is necessary before any infringement suit may be filed in a court by a transferee. However, the Copyright Act provides several inducements or advantages to encourage recordation, including:

- Under certain conditions establishing priorities between conflicting transfers and nonexclusive licenses;
- Under certain conditions establishing priority between conflicting transfers, and,
- Establishing a public record of the contents of the transfer or document.

Furthermore, recordation of a document in the Copyright Office provides the additional advantage of "constructive notice"—a legal concept implying, in this instance, that the public could have had actual knowledge of the facts stated in a properly recorded document. Section 205 of the copyright law says that:

> **Recordation of a document in the Copyright Office gives all persons constructive notice of the facts stated in the recorded document, but only if—**
>
> **(1) the document, or material attached to it, specifically identifies the work to which it pertains so that, after the document is indexed by the Register of Copyrights, it would be revealed by a reasonable search under the title or registration number of the work; and**
>
> **(2) registration has been made for the work.**

MECHANICS OF RECORDING TRANSFERS OR OTHER DOCUMENTS

The date of recordation is the date when the written document in proper form and the proper fee are received in the Copyright Office.

A written document is in proper form when:

1. It contains the proper signature or signatures;
2. It is complete by its own terms; and,
3. It is capable of being reproduced on microfilm.

Documents sent to the Renewals and Documents Section for recordation are filmed upon receipt, making them quickly accessible to the public.

Because documents are filmed before they have been examined and cataloged, the presence of a document on the microfilm does not indicate that the document has been recorded, or, if recorded, that the volume and page number appearing on the film will be that ultimately assigned to the document in Copyright Office records.

After examination, the document is indexed in the Copyright Office on-line documents file, COHD, under the names and titles it contains. The original is returned to the sender with a certificate of record bearing the date of recordation, and the volume and page number of the microfilm on which the document is recorded.

Documents will be available for public viewing on microfilm reader-printers located in the Copyright Card Catalog, Room LM-459 of the Library of Congress James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C.; the Copyright Card Catalog is open to the public from 8:30 a.m. to 5 p.m. on weekdays.

MAILING INSTRUCTIONS

Transfers of copyright and other documents pertaining to a copyright should be submitted to:

Renewals and Documents Section, LM-444
Examining Division
Copyright Office
Library of Congress
Washington, D.C. 20559

DOCUMENTS NOT COVERED BY THIS CIRCULAR

The filing or recordation of the following documents is not covered by this circular and other requirements may apply:

1. Certain contracts entered into by cable systems lo-

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cated outside of the 48 contiguous states. [17 U.S.C. 111(e); see 37 CFR 201.12];

2. Notices of identity and signal carriage complement, and statements of account of cable systems. [17 U.S.C. 111(d); see 37 CFR 201.11; 201.17];
3. Original signed notices of intention to obtain a compulsory license to make and distribute phonorecords of nondramatic musical works. [17 U.S.C. 115(b); see 37 CFR 201.18];
4. License agreements and terms and rates of royalty payments voluntarily negotiated between one or more public broadcasting entities and certain owners of copyright. [17 U.S.C. 118; see 37 CFR 201.9];
5. Notices of termination. [17 U.S.C. 203, 304(c); see 37 CFR 201.10];
6. Statements regarding the identity of authors of anonymous and pseudonymous works and statements relating to the death of authors. [17 U.S.C. 302]

Copies of applicable regulations and specific information about recording documents not covered by this circular may be obtained from:

Public Information Office, LM-401
Copyright Office
Library of Congress
Washington, D.C. 20559

RELEVANT STATUTORY PROVISIONS FROM TITLE 17 OF THE UNITED STATES CODE

Section 101.

§ 101. Definitions

A "joint work" is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

A "transfer of copyright ownership" is an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license.

Section 204.

§ 204. Execution of transfers of copyright ownership

(a) A transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent.

(b) A certificate of acknowledgement is not required for the validity of a transfer, but is prima facie evidence of the execution of the transfer if—

(1) in the case of a transfer executed in the United States, the certificate is issued by a person authorized to administer oaths within the United States; or

(2) in the case of a transfer executed in a foreign country, the certificate is issued by a diplomatic or consular officer of the United States, or by a person authorized to administer oaths whose authority is proved by a certificate of such an officer.

Section 205.

§ 205. Recordation of transfers and other documents

(a) CONDITIONS FOR RECORDATION.—Any transfer of copyright ownership or other document pertaining to a copyright may be recorded in the Copyright Office if the document filed for recordation bears the actual signature of the person who executed it, or if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document.

(b) CERTIFICATE OF RECORDATION.—The Register of Copyrights shall, upon receipt of a document as provided by subsection (a) and of the fee provided by section 708, record the document and return it with a certificate of recordation.

(c) RECORDATION AS CONSTRUCTIVE NOTICE.—Recordation of a document in the Copyright Office gives all persons constructive notice of the facts stated in the recorded document, but only if—

(1) the document, or material attached to it, specifically identifies the work to which it pertains so that, after the document is indexed by the Register of Copyrights, it would be revealed by a reasonable search under the title or registration number of the work; and

(2) registration has been made for the work.

(d) RECORDATION AS PREREQUISITE TO INFRINGEMENT SUIT.—No person claiming by virtue of a transfer to be the owner of copyright or of any exclusive right under a copyright is entitled to institute an infringement action under this title until the instrument of transfer under which such person claims has been recorded in the Copyright Office, but suit may be instituted after such recordation on a cause of action that arose before recordation.

(e) PRIORITY BETWEEN CONFLICTING TRANSFERS.—As between two conflicting transfers, the one exe-

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cuted first prevails if it is recorded, in the manner required to give constructive notice under subsection (c), within one month after its execution in the United States or within two months after its execution outside the United States, or at any time before recordation in such manner of the later transfer. Otherwise the later transfer prevails if recorded first in such manner, and if taken in good faith, for valuable consideration or on the basis of a binding promise to pay royalties, and without notice of the earlier transfer.

(f) PRIORITY BETWEEN CONFLICTING TRANSFER OF OWNERSHIP AND NONEXCLUSIVE LICENSE.—A nonexclusive license, whether recorded or not, prevails over a conflicting transfer of copyright ownership if the license is evidenced by a written instrument signed by the owner of the rights licensed or such owner's duly authorized agent, and if—

(1) the license was taken before execution of the transfer; or

(2) the license was taken in good faith before recordation of the transfer and without notice of it.

Copyright Office • Library of Congress • Washington, D.C. 20559

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